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DOCKET NO. 870489-CA

IN THE UTAH COURT OF APPEALS

PROPERTY ASSISTANCE CORPORATION,	:	
Plaintiff and Respondent,	:	Case No. ~~87089-CA~~ 870489-CA
vs.	:	Category 14b
DOUGLAS C. ROBERTS and BETTY J. ROBERTS,	:	
Defendants and Appellants.	:	

REPLY BRIEF OF APPELLANTS

Appeal from a Final Judgment
of the Third District Court,
Honorable David S. Young,
Judge.

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INTRODUCTION

The plaintiff's brief in this matter contains the assertion that the issues properly presented on appeal are somehow constrained by terms of the findings and conclusions entered by the court below. Obviously, this is not the law or the commission of error in entering findings and conclusions would never be reviewable. Indeed, not only are these acts of trial courts subject to review but, as has been previously noted by this Court, the conclusions of law entered by a trial court are not presumed to be correct and are not entitled to deference on appeal. Steele v. Breinholt, ___P.2d___, 73 UAR 86 (Utah App. 1988). Accordingly, this Court should review the conclusions of law entered in this action in light of the evidence actually received to determine if they are supported by that evidence.

Furthermore, the trial court's interpretation of a written contract is the determination of a question of law which need not be deferred to an appeal. Faulkner v. Farnsworth, 714 P.2d 1149 (Utah 1986). This Court is free to, and should, interpret the written option in issue without reference to the trial court's erroneous conclusion concerning that document.

POINT I - THE PLAINTIFF NEVER ACQUIRED CONTRACTUAL RIGHTS CAPABLE OF SPECIFIC PERFORMANCE.

The plaintiff's attempts to remake history in this action by suggesting that this case does not involve an option are contrary to all the evidence and its own pleadings. The present

action was initiated by a complaint which alleged that "[o]n or about February 2, 1986, plaintiff and defendants entered into an agreement whereby plaintiff obtained an option to purchase certain property from defendants." The complaint further alleged that "despite plaintiff's substantial performance, [defendants] refused to perform pursuant to the option agreement."

After becoming informed that the law does not recognize the doctrine of substantial performance in reference to options, the plaintiff then decided the option in question was not a "true" option, whatever that means.

However, the option in question isn't confusing, ambiguous or subject to conflicting interpretations. While the trial court entered a conclusion of law that the parties had an agreement that was "the equivalent of an earnest money receipt and offer to purchase which was accepted", this conclusion of law, which is entitled to no deference in this Court, is totally at odds with the evidence.

It is significant that plaintiff was unable to cite to any testimony or any exhibit which supposedly provides the basis in fact for this conclusion of law. The documents signed by the defendants expressly refer to an option granted to plaintiff. Plaintiff unequivocally admitted he failed to exercise the option.

While it is undoubtedly true that the trial court believed that plaintiff made a stupid mistake through ignorance, this fact provides no basis for "reforming" his agreement with the defendants into the type of agreement he could have, but did

not, make for himself.

POINT II - A RECOVERY IN QUANTUM MERUIT REQUIRES A FINDING OF OF SOME ACT BY THE DEFENDANTS JUSTIFYING RELIEF.

During the option period plaintiff agreed with Tracy Collins to pay off a note which Tracy Collins held, which note was secured by a deed of trust against the property. Plaintiff admits that the defendants did not request that it make this payment. However, plaintiff contends that it was obligated to make the payment by virtue of the "agreement" entered into with the Roberts. However, the "agreement" referred to is the contract which never came into existence because plaintiff failed to exercise its option to make that agreement binding upon the Roberts.

While there is no question that the Roberts were benefited by this payment, the mere fact that they were enriched does not provide a basis for relief in equity. As the Utah Supreme Court noted in Commercial Fixtures & Furnishings, Inc. v. Adams, 564 P.2d 773 (Utah 1977):

> The mere fact that a third person benefits from a contract between two others does not make such third person liable in quasi-contract, unjust enrichment, or restitution. There must be some misleading act, request for services, or the like, to support such an action.

564 P.2d at 774. See also, Knight v. Post, ___P.2d___, 74 UAR 32 (Utah App. 1988).

Although the plaintiff conferred a benefit upon defendants while undoubtedly laboring under a unilateral mistake regarding its legal rights, there was no conduct by the defendants which justifies imposing the equitable remedy of restitution.

POINT III - THIS APPEAL IS NOT MOOT.

The controversy between the parties in this action has not been eliminated. The central controversy involves who is rightfully entitled to ownership of the home. The Roberts have taken every action possible, short of contempt of Court, to preserve this central question for appellate resolution. They have filed motions for new trial and for stay of exec ution in the trial court; they promptly appealed and moved for stay of execution in this court. They sought protection in the Bankruptcy Court and they have not accepted any benefit conferred upon them by the judgment. All of these actions are entirely inconsistent with the notion that they have "agreed" to the judgment entered below.

As has been previously noted, the general rule relating to the mootness of an appeal is that

> [w]here a party acts under compulsion of and in accordance with a judgment order from which an appeal is then taken, there has been no waiver of the appeal or release of errors, the issue is not moot and the party is not estopped from prosecuting the appeal.

Les Michude & Son Co. v. Metropolitan Sanitary Dist., 97 Ill. App. 3d. 340, 422 N.E. 2d 1078 (1981).

Plaintiff does not point to any purported act of the defendants as an expression of an "agreement" with the judgment below, but rather asserts only that the failure of parties, who are admittedly bankruptcy, to post an $85,000 bond should preclude consideration of their appeal on the merits. Any such interpretation of Utah law would be violative of the Utah Constitution's Open Courts provision, Art. I §11, and the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. See, generally, Pennzoil Co. v. Texaco, Inc., ___U.S.___,107 S.Ct. 1519 (1987).

As defendants are entitled to a review of their claims on the merits, without regard to their impecuniosity, this Court should reject the suggestion of mootness.

CONCLUSION

Each of the arguments advanced in support of the judgment entered below requires a finding of the existence of a bilateral contract, which contract never came into being by virtue of the failure of the plaintiff to exercise its option. The belief that the plaintiff would have exercised its option had it been properly cognizant of the law does not provide any legal justification for plaintiff's failure to do so. Accordingly, the judgment entered below should be reversed and this matter remanded with instructions to

enter judgment against the plaintiff, no cause of action.

DATED this_____day of February, 1988.

M. David Eckersley
Attorney for Appellants

CERTIFICATE OF MAILING

I hereby certify that four true and correct copies of the foregoing were mailed this_____day of February, 1988, to the following:

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